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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MAGANA GALDAMEZ,

Defendant and Appellant.

B215677

(Los Angeles County  
Super. Ct. No. GA067261)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Dorothy L. Shubin, Judge. Affirmed.

Sara H. Ruddy, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, James  
William Bilderback II and Tita Nguyen, Deputy Attorneys General, for Plaintiff and  
Respondent.

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Jose Magana Galdamez appeals from the judgment entered following his conviction for the attempted willful, deliberate and premeditated murder of his former girlfriend, with special findings by the jury that he had personally used a deadly weapon in committing the attempted murder and had inflicted great bodily injury during the attack. On appeal Galdamez contends the trial court committed prejudicial error in overruling his objection under Evidence Code section 352 to the prosecution's use of a videotape showing the victim's blood splattered throughout the crime scene. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Galdamez slashed Yesenia F.'s arm with a painter's scraping tool at her apartment on October 5, 2006. At trial Galdamez conceded he had committed the aggravated assault using a deadly weapon and, in the process, had inflicted great bodily injury on Yesenia. He disputed, however, that he intended to kill Yesenia and thus argued he was not guilty of attempted murder or attempted voluntary manslaughter.

#### *1. The October 5, 2006 Attack*

Galdamez and Yesenia, who is eight years younger than Galdamez, began dating in 2002 when Yesenia was 13 or 14 years old.<sup>1</sup> In October 2006 Yesenia, who had recently turned 18, lived in a first floor apartment in Glendale with her mother, Marta G., her sister and her sister's two children. Yesenia was attending college (California State University, Northridge) and working in a department store. Galdamez was a house painter.

A short time before the October 5, 2006 attack, Galdamez told Yesenia and Marta G. he wanted to get an apartment with Yesenia and marry her. Yesenia, however, wanted to end her relationship with Galdamez and told him they needed some time apart.

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<sup>1</sup> Galdamez does not challenge the sufficiency of the evidence to support his conviction for attempted willful, deliberate and premeditated murder, arguing only that allowing the jury to see the videotape of the crime scene (Yesenia's apartment) created undue prejudice. Accordingly, our description of events is based on the evidence presented at trial, viewing the whole record in the light most favorable to the judgment. (Cf. *People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

On the morning of October 5, 2006 Yesenia was alone in the apartment sleeping. She woke up and saw Galdamez standing next to the bed. According to Yesenia, Galdamez seemed angry and jealous. He tried to examine her cell phone, but Yesenia threw it under the bed. Yesenia told Galdamez she needed to leave soon; he responded she was not going anywhere. Yesenia went to the bathroom, taking the apartment's cordless telephone with her. (Yesenia checked to be sure the telephone had a dial tone before going into the bathroom and closing the door.) Galdamez started pounding loudly on the closed bathroom door; Yesenia opened it and then took a shower.

When Yesenia stepped out of the shower, the telephone was no longer working. The apartment smoke alarm then sounded. Checking the noise, Yesenia saw Galdamez in the living room writing on some paper. Yesenia returned to the bathroom to finish getting dressed. Galdamez followed Yesenia and told her she had to have sex with him if she wanted to leave. Yesenia agreed, and the two had sex in the bedroom. As they lay on her mother's bed after intercourse, Yesenia noticed Galdamez had a blade in his hand (a tool used by painters to scrape old paint) and asked him why. Galdamez said he was going to kill himself, but then came toward Yesenia and tried to cut her wrist. She pulled her hand away and screamed. Galdamez asked if she thought he would really try to hurt her. Yesenia described herself as in shock and said she again started to leave the apartment, asking Galdamez to return her cell phone to her. When he did, she noticed the battery was missing.

As Yesenia moved toward the door, Galdamez cut her left arm and said, "You're really going to die now." Yesenia screamed and attempted to run from Galdamez, who grabbed her and pulled her. At trial Yesenia described the next several minutes as an ongoing struggle, with her breaking free, screaming for help and trying to escape the apartment, while Galdamez continually grabbed her and pulled her back from the doors and the windows of the apartment. As the two struggled throughout the apartment, blood squirted from Yesenia's arm. Finally, Galdamez threw Yesenia onto her mother's bed, got on top of her, held her down and told her that she was going to die there.

Ultimately, in an effort to persuade Galdamez to stop, Yesenia told him that she would not break up with him. In response, Galdamez told Yesenia he would let her go if she promised to say she had tried to commit suicide. Yesenia agreed. Galdamez replaced the battery in the cell phone and called the police emergency number, telling the operator his girlfriend was attempting to commit suicide. As they waited for help, Galdamez tied a T-shirt around Yesenia's arm. When police officers and an ambulance arrived, Yesenia reported Galdamez had been trying to kill her.

At the crime scene police investigators found two "suicide notes" written in Spanish, which suggested a suicide pact between Yesenia and Galdamez. Yesenia did not write either note.

Yesenia received 17 stitches as a result of the wound and has a scar on her arm from the injury. At trial she testified her arm still felt numb.

Testifying in his own defense, Galdamez provided a significantly different account of the stabbing incident and its immediate aftermath. He acknowledged Yesenia had said she wanted to take some time apart from him (she was upset with him because of his displays of jealousy about her working and the men she might meet at the store). As of October 5, 2006, however, he still believed they were a couple. He used a key Yesenia had given him to enter the apartment. Yesenia was asleep but woke up when he tried to use her cell phone. He told Yesenia he wanted to talk and asked her if she had met someone else. He also asked her to have sex. Yesenia said she had to leave, but agreed to have sex with Galdamez. Afterward, while she was in the shower, he disconnected the apartment telephone because he did not want Yesenia to call her mother. After Yesenia showered, she and Galdamez lay together on her mother's bed, had sex again and then talked about why Yesenia wanted to take time apart. Galdamez claimed he then took the painter's tool with the razor blade and told Yesenia, half jokingly, he was going to kill himself if she left. He denied trying to cut her with the knife at that point. Yesenia got off the bed and continued to get ready to leave the apartment.

Galdamez explained he was upset Yesenia would not tell him where she was going and believed she was trying to hide something from him. He went into the living room while Yesenia dressed and, as he described it, had sad thoughts. About 20 minutes later, Yesenia came out of her bedroom, ready to leave the apartment. Galdamez asked where she was going; she would not say. Purportedly without knowing why he did it, Galdamez grabbed the knife and cut her arm. When he saw her bleeding profusely, he got scared and threw the tool to the ground. He tried to grab Yesenia to see how badly she was hurt because there seemed to be a lot of blood, but Yesenia ran from him. Finally, he caught her and made her sit on the bed to allow them both to calm down. He then tied a rag around the wound and told her he was going to call for help, but asked her not to put him in jail. She agreed. Galdamez said he had written the suicide notes to scare Yesenia's mother and to persuade her to leave Yesenia and him alone.

## *2. Prior Incidents of Violence Against Yesenia*

When Yesenia turned 15, she had a quinceañera and was escorted by a boy from her church because she did not want her mother to know she was dating Galdamez. Some time later Galdamez saw a framed photograph of Yesenia and the boy taken at the celebration. He became enraged, broke the frame and attempted to choke Yesenia with both his hands.

Several days prior to October 5, 2006, after Yesenia had told Galdamez she no longer wanted to be with him, the two were together at Yesenia's apartment. Yesenia told Galdamez she had to go to work; Galdamez said he would not let her leave and held her down on the bed where they had been talking. Galdamez ultimately agreed to take her to work, but initially did not stop the car when they arrived at her workplace. Yesenia asked where they were going and persuaded Galdamez to return to the store and let her out. However, when Galdamez picked Yesenia up that evening and they talked further about her decision to terminate the relationship, Galdamez slapped her hard across her face. According to Yesenia, half her face went numb.

### *3. Testimony about Yesenia's Loss of Blood and the Challenged Videotape*

Glendale Police Officers Jacob Postajian and Leticia Chang responded to the police emergency call made by Galdamez. When he arrived at the apartment, Postajian saw dried blood smeared on Galdamez's forearms and hands and dried blood drops on his shirt. Looking inside the open apartment door, Postajian observed a large amount of blood on the floor and blood smeared on the walls inside the front room. Yesenia, who was crying on the couch in the front room, had a large amount of blood on her; and Postajian saw a large cut on her left arm, which was bleeding profusely.

Glendale Fire Captain Rudolph Woody, who responded to the scene with other firefighters and paramedics, also testified there was a large amount of blood inside the apartment, which led him to treat Yesenia's injury with a high level of urgency. Paramedic Richard Bush described the wound as serious and explained Yesenia could have lost enough blood for her heart to stop pumping if the tourniquet (the T-shirt tied around her upper arm) had not been applied.

While the paramedics were treating Yesenia, Officer Postajian checked the rest of the apartment. He found no one there, but testified that blood was smeared on the walls throughout the apartment. Inside the bedroom there was a large puddle of blood in the center of the bed. Officer Chang, who said she had expected to find an attempted suicide based on the information provided in the emergency call, also saw a large amount of blood at the entryway to the apartment and on the floor and walls. Chang testified the amount, location and splatter pattern of the blood were not consistent with an attempted suicide.

Two forensic specialists working with the Glendale Police Department documented the crime scene with sketches, photographs and a videotape. A number of the photographs, including those depicting blood splattered in the living room and other parts of the apartment, were admitted into evidence without objection. Galdamez moved to exclude the videotape, which shows each of the rooms (living room, kitchen, bathroom and Yesenia's bedroom) and hallways in the apartment and focuses principally on the

various smears and pools of blood. “Insofar as the jury has seen photos,” Galdamez argued the videotape had little probative value and was cumulative and prejudicial. The prosecutor responded the videotape was relevant, insisting the photographs previously admitted into evidence did “not document every piece of blood that they recovered because it was just too much.”

The court denied the defense request to exclude the videotape, explaining, “I do think it is highly probative on the issues in the case, particularly from the arguments in question, and it appears the main focus on the case is as to count 1 [attempted willful, deliberate and premeditated murder], what actually happened, and if there is evidence to support the charges in count 1 or not, what happened in terms of the alleged attack, exactly how it was carried out, what happened with the blood at the crime scene, what path was taken within the apartment. All of that has potential bearing on count 1, although there may be some prejudice to showing [the videotape], it’s only because it is so highly probative, any prejudice is substantially outweighed by the relevance. It also will not take an undue amount of time.”

The videotape was played to the jury. Forensic specialist Angela Hilliard, who was present when the videotape was made, provided a narration.

#### *4. Jury Instructions, The Verdict and Sentence*

With respect to the attempted murder charged in count 1, the court instructed the jury, using CALJIC standard instructions, on the elements of attempted murder and the additional findings necessary to convict Galdamez of attempted willful, deliberate and premeditated murder. In addition, the court instructed the jury attempted voluntary manslaughter was a lesser included offense of attempted murder, distinguished murder from manslaughter and explained the basis on which an attempted unlawful killing is properly reduced from attempted murder to attempted voluntary manslaughter on the ground of heat of passion. The court further instructed that Galdamez could be convicted of attempted voluntary manslaughter if the jury was not satisfied beyond a reasonable

doubt he was guilty of attempted murder but was convinced beyond a reasonable doubt he was guilty of the lesser crime.

The jury convicted Galdamez of attempted willful, deliberate and premeditated murder, assault with a deadly weapon, false imprisonment, making a criminal threat and dissuading a witness; he was acquitted on the charge of forcible rape. The jury found true the special allegations that Galdamez had personally used a deadly weapon in committing the attempted murder and had inflicted great bodily injury during the attempted murder, false imprisonment and aggravated assault.

The trial court sentenced Galdamez to an indeterminate life term for attempted willful, deliberate and premeditated murder (Pen. Code, §§ 664, 187, subd. (a)), plus one year for the use of a deadly weapon while committing the offense (Pen. Code, § 12022, subd. (b)(1)), plus an additional four years for inflicting great bodily injury on his victim (Pen. Code, § 12022.7). Sentence for the remaining four felonies was stayed pursuant to Penal Code section 654.

## **DISCUSSION**

### *1. Standard of Review*

Evidence Code section 352 requires the trial court to weigh the probative value of the proffered evidence against the likelihood of, among other things, undue prejudice to the defendant.<sup>2</sup> “We review for abuse of discretion a trial court’s ruling on relevance and the exclusion of evidence under Evidence Code section 352.” (*People v. Avila* (2006) 38 Cal.4th 491, 578.) Under the abuse of discretion standard, “a trial court’s ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004.)

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<sup>2</sup> Evidence Code section 352 provides, “The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”



## *2. The Trial Court Did Not Abuse Its Discretion in Admitting the Videotape of the Crime Scene*

Yesenia's and Galdamez's descriptions of the stabbing attack and its immediate aftermath were dramatically different. According to Yesenia, Galdamez told her she was going to die as he stabbed her; and the two then engaged in an ongoing struggle as they moved throughout the apartment. Galdamez, on the other hand, denied threatening Yesenia's life, said he did not know why he had stabbed her and explained he ran after her following the stabbing only because he was concerned about the severity of her injury. The jury had to evaluate these conflicting stories to determine Galdamez's state of mind (intent and malice) and thus to decide whether Galdamez was guilty only of an aggravated assault, which he admitted, or of attempted murder (premeditated or not premeditated) or attempted voluntary manslaughter.

The physical evidence left by the struggle between Yesenia and Galdamez—the blood splatters and stains—was certainly relevant to that issue, as the trial court ruled, as it provided at least some support for Yesenia's version of the events following the actual stabbing. (See Evid. Code, § 210 [“‘[r]elevant evidence’ means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action”].)<sup>3</sup> Notwithstanding the colorful language used by Yesenia's appellate counsel to describe the contents of the videotape (“[t]he video was grisly and gory”), our own review of the exhibit confirms it is neither inflammatory nor unduly prejudicial. Indeed, the jury had already heard detailed descriptions of the bloody apartment from Officers Postajian and Chang and Captain Woody and had seen photographs of bloodstains and smears in the living room, bedroom and hallway. The

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<sup>3</sup> Galdamez may be correct the videotape did not demonstrate how much blood Yesenia had actually lost or the seriousness of her injury, but the location and pattern of the blood smears throughout the apartment were nonetheless relevant to corroborate Yesenia's testimony.

videotape simply provided the jury an accurate, complete view of the crime scene. The trial court's ruling allowing it into evidence was well within its broad discretion.

**DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.